

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re Wholesale Grocery Products  
Antitrust Litigation

**PRELIMINARY CASE  
MANAGEMENT ORDER**  
Court File No. 09-MD-2090 ADM/AJB

This Order Relates to All Actions

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The above-captioned matter came before the undersigned United States District Judge on December 3, 2009, to discuss case management issues, including a requested stay of discovery and a requested amendment to a stipulated protective order [Docket No. 105 (09-0983)]. The Court finds that staying discovery pending the resolution of a motion to dismiss by Defendants—a motion previously briefed when litigation was stayed to refer this action to the Judicial Panel on Multidistrict Litigation—is appropriate. The Court also finds appropriate the requested amendment to the stipulated protective order.

Upon consideration of the submissions and arguments of the parties, **IT IS HEREBY ORDERED** that:

1. Within 20 days from the Court's appointment of Plaintiffs' Interim Lead Counsel and Liaison Counsel, Plaintiffs, through Interim Lead Counsel, shall file a Consolidated Class Action Complaint.
2. Defendants shall file an answer or other responsive pleading within 30 days of the date Plaintiffs file their Consolidated Class Action Complaint. If Defendants file a motion to dismiss the Consolidated Amended Complaint, Plaintiffs' opposition to the motion shall be due 30 days thereafter, and any reply brief by Defendants in support of their motion shall be due 15 days after Plaintiffs' opposition is filed. Within one week of Defendants filing a motion to dismiss, Plaintiffs and Defendants shall jointly contact the Court to reserve a mutually

convenient hearing date to occur as soon as practicable following the deadline for Defendants filing any reply memorandum.

3. All discovery and other pre-trial proceedings are stayed pending the Court's resolution of Defendants' motion to dismiss.

4. Within 30 days of the filing of Plaintiffs' Consolidated Class Action Complaint, Plaintiffs may file a motion for partial summary judgment on whether Defendants' agreement not to compete violated the antitrust laws. Defendants' opposition to the motion shall be due 30 days thereafter, and any reply by Plaintiffs in support of their motion shall be due 15 days after Defendants' opposition is filed. Within one week of Plaintiffs filing a partial summary judgment motion, Plaintiffs and Defendants shall jointly contact the Court to reserve a mutually convenient hearing date to occur as soon as practicable following the deadline for Plaintiffs filing any reply memorandum.

5. The July 20, 2009 Protective Order previously entered in this case is fully applicable to all parties and their counsel. The Protective Order is amended to add the following sentence to the end of paragraph 14: "The party asserting that the material is Confidential or Highly Confidential shall have the burden of proving that the information in question is within the scope of protection afforded by Federal Rule of Civil Procedure 26(c)." Subject to the terms of that Protective Order, all parties and counsel in the case may have access to the documents already produced by Defendants in this case.

6. In the event that Defendants' motion to dismiss is denied, (a) Defendants shall file their answers to the Consolidated Class Action Complaint within 14 days after notice of the Court's order; and (b) Plaintiffs and Defendants shall conduct a Rule 26(f) conference with regard to discovery within 14 days of the date Defendants file their answers and shall jointly

contact the Court to reserve a mutually convenient Rule 16 conference date to occur as soon as practicable thereafter.

BY THE COURT:

s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE

Dated: December 15, 2009.